

Proposed Section 732.30(d)

[NOTE: Language in italics is language from the Act and also is the language in current Section 732.30(d) (Emergency Rule)]

- (d) *If the violation of a basic local exchange service quality standard is caused by a carrier other than the carrier providing retail service to the customer, the carrier providing retail service to the customer (for purposes of this subsection (d), the “retail carrier”) shall credit the customer as provided in this Section. The carrier causing the violation (for purposes of this subsection (d), the “wholesale carrier”) shall reimburse the carrier providing retail service the amount credited the customer. When applicable, an interconnection agreement shall govern compensation between the carrier causing the violation, in whole or in part, and the retail carrier providing the credit to the customer.* Unless an interconnection agreement between the wholesale carrier and the retail carrier contains provisions setting forth, with express reference to this subsection (d), the procedures by which the retail carrier is to request and receive reimbursement from the wholesale carrier in accordance with this subsection, the following procedures shall apply to such reimbursements. No interconnection agreement or amendment to an existing interconnection agreement shall be required to implement the provisions of this subsection (d).

- 1) **Request for reimbursement.** The retail carrier shall submit a report to the wholesale carrier by the 10th day of the month separately identifying all compensation credited, paid or provided by the retail carrier to its customers in accordance with this Section during the preceding calendar month for which reimbursement is requested from the wholesale carrier. The retail carrier’s report may also include requests for reimbursement for compensation credited, paid or provided by the retail carrier to customers in prior months and not requested by the retail carrier in the report for a prior month, provided, that the retail carrier shall have a maximum of 105 days from the date that compensation is credited, paid or provided by the retail carrier to its customer to request reimbursement. Provided further, that the retail carrier shall have 105 days from the effective date of this Section 732.30(d)(1) to request reimbursement for compensation paid to customers from August 1, 2001 to such effective date. In cases in which compensation was provided to the retail carrier’s customer on multiple dates arising out of the same occurrence or related occurrences, the 105 day period shall run from the most recent date on which compensation was provided to the customer. The retail carrier’s report shall include the following information with respect to each request for reimbursement:

- A) Customer name and telephone number affected;

- B) The basic local exchange service quality standard that was violated, i.e., failure to restore service within a time period required by this Part, failure to install service within a time period required by this Part, or failure to keep a scheduled repair or installation appointment where a customer premises visit requires a customer to be present;
 - C) Brief statement as to how actions or inactions of the wholesale carrier, or failure or deficiency in any network element or service provided by the wholesale carrier to the retail carrier, caused the violation of the basic local exchange service quality standard by the retail carrier;
 - D) Amount of compensation credited, paid or provided by the retail carrier to its customer (including the cost to the retail carrier of any alternative telephone service provided to the customer) for which reimbursement is requested, and the date or dates on which the compensation was provided; and
 - E) Whether the retail carrier requests reimbursement from the wholesale carrier by invoice credit or by separate payment.
- 2) **Response to Requests for Reimbursement.** The wholesale carrier shall have fourteen (14) calendar days after receipt of the retail carrier's report to notify the retail carrier in writing if it disputes any of the requests for reimbursement. Such notice shall separately identify each request for reimbursement of compensation to a customer that is disputed, and the basis on which the wholesale carrier disputes the reimbursement. Any request for reimbursement which is not disputed in writing by the wholesale carrier within the fourteen calendar day period shall be deemed agreed to by the wholesale carrier. For each request for reimbursement that is timely disputed by the wholesale carrier, the parties shall use the dispute resolution process set forth in paragraph (3) below.
- 3) **Dispute Resolution Process.** A) Within ten (10) business days following notice from the wholesale carrier that it disputes a request for reimbursement, the parties' designated contacts (subject matter experts) shall engage in good faith settlement negotiation, in any mutually agreed-upon manner, to attempt to resolve the dispute.
- B) If a resolution of a disputed request for reimbursement is not reached within thirty (30) calendar days from the date of notice of the dispute, the parties shall jointly request voluntary mediation by the Commission pursuant to Section 10-101.1 of the Act. The Commission shall cause such voluntary mediation to be conducted expeditiously. At the request of a party or by direction of the

Commission, any voluntary mediation may encompass multiple outstanding disputed requests for reimbursement.

C) At the conclusion of the voluntary mediation process, either party may seek binding arbitration by the Commission pursuant to Section 10-101.1 of the Act. At the request of a party or by direction of the Commission, any binding arbitration may encompass multiple outstanding disputed requests for reimbursement. Any disputed request for reimbursement which it is determined through binding arbitration should be paid by the wholesale carrier shall also bear interest at the rate specified in the Uniform Penalty and Interest Act from the date on which the wholesale carrier issued its notice of dispute to the date of payment. If it is determined through binding arbitration that a disputed request for reimbursement should be paid by the wholesale carrier, the wholesale carrier shall be responsible for the costs of the binding arbitration, and the wholesale carrier may be ordered to reimburse the retail carrier for its attorney fees.

4) **Method of Reimbursement.** A) Any request for reimbursement which is not disputed by the wholesale carrier, or which the wholesale carrier agrees to honor after settlement negotiations pursuant to subparagraph 3(A) or voluntary mediation pursuant to subparagraph 3(B), or which the wholesale carrier is ordered to pay after binding arbitration pursuant to subparagraph 3(C), shall be either paid to the retail carrier by separate payment within 21 calendar days, or credited to the retail carrier on the wholesale carrier's next invoice to the retail carrier for network elements or other services, depending on the method of reimbursement that was requested by the retail carrier.

B) Where reimbursement is to be made by credit on the wholesale carrier's next invoice to the retail carrier, the invoice shall show separately the credit and the reason for it. If the wholesale carrier fails to show such credit for reimbursement on the next invoice, the retail carrier may nevertheless deduct the amount of the credit in remitting payment of the invoice to the wholesale carrier. If such invoice is for less than the amount of reimbursement to be credited, the wholesale carrier shall, contemporaneous with issuance of the invoice, issue a check to the retail carrier for the amount of the reimbursement not able to be credited on the invoice.